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No. 05-1376

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IN THE

Supreme Court of the United States

Robert H. Sarvis
Petitioner,

v.

Barbara E. Hathaway
Respondent

On Petition For Writ Of Certiorari
To The Maine Supreme Judicial Court

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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REPLY STATEMENT OF THE CASE

Ms. Hathaway's principle argument is that a Federal question was not raised in the Maine state courts. That could not be further from the truth. The record is that in each of the courts, the District Court, the Superior Court, and Supreme Judicial Court, Sarvis raised the federal question regarding contracts. (See: Appendix E (Appeal Brief of Robert H. Sarvis to Maine Supreme Judicial Court) page 11a -15a):

> First and foremost this is contract case stemming from divorce . . . (Appendix E, page 11a)
>
> Furthermore, Article 1, §10 of the United States Constitution provides that "No state shall . . . pass any . . . Law impairing the Obligation of Contracts." *Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518 (1819). Neither may the District Court nor this Court [the Maine Supreme Judicial Court] interpret Maine Law so as to set aside or impair the enforceability of this Agreement [the Hathaway/Sarvis Agreement – Appendix D) without violating Sarvis' Constitutional rights. (emphasis added).

In Footnote 3 of Sarvis' brief (Appendix E, page 13a) he also refers to the federal cases *Schoonover v. Schoonover*, 172 F.2d 526 (10th Cir.) and *Hood v. Hood*, 335 F.2d 585 (10th Cir.) when Sarvis advises the Maine courts that "All States and authorities that have addressed the enforcement of a settlement agreement not presented to the divorce court have agreed that it be sued upon "in an independent action in contact." . . . Maine stands alone requiring enforcement through the divorce court (*Sarvis v. Hathaway*, CUM-04-33). (Appendix E, page 13a).

REASONS FOR GRANTING THE PETITION

Clearly, Sarvis raised the Constitutional issue that his Constitutional right under contracts would be violated by the Maine courts if they refused to enforce the settlement agreement thus meeting this Court's jurisdictional requirements under 28 U.S.C. § 1257(a). Similarly, the above record satisfies *Web's* requirement: "there should be no doubt from the record that a claim under a federal statue or the Federal Constitution was presented in the state courts and those courts were appraised of the nature or substance of the federal claim . . ." *Web v. Web*, 451 U.S. 493, 501 (1981). Sarvis also complied with Supreme Court Rule 14(g)(i) in that he raise his Federal Constitution question at all court levels and specifically delineated it before the Maine Supreme Judicial Court, citing the U.S. Constitution and relevant Federal case law. The record is clear and unequivocal.

Ms. Hathaway's argument here is countermanded by the record. It is a red hearing intending, she hopes, as she has from the outset of this litigation that her recital of the admittedly long and sorry history of legal action of this matter will prejudice this Court as well. Why else in her footnote 2 would she have also listed litigation totally unrelated to this matter? And reiterate that Sarvis is pro se. She seeks to prejudice this Court so it will not address the true facts and true legal history of this case.

The Constitutional contact issue has always been squarely before the Maine courts. It was argued to all of the Maine courts that this was an interstate contract claim. Sarvis was in living in Pennsylvania, Hathaway in Maine when the contract was made. That was precisely why Sarvis brought his first action in the Superior Court as a contract and conversion claim, not a divorce action (CV-03-456). Indeed, all authorities agree that his claim was properly brought as an independent action in contract (See Appendix E, Footnote 3, page 13a). The Maine Supreme Judicial Court avoided that contract decision by stating Sarvis was in the

wrong forum. That decision was incorrect at the time, however it did give Sarvis the ability to have it addressed in Divorce Court. So he brought a motion to enforce the contract in the Divorce Court. The Divorce court refused to enforce it solely because the Agreement had not been incorporated in the divorce decree (Appendix B, page 5a). Thus, an interstate contract claim was squarely and jurisdictionally before the Supreme Judicial Court. But they did not address it in their decision either as a State contract issue or a Federal contract issue.

The conclusion is inescapable. The Maine Supreme Judicial Court intentionally avoided it, because it did not want to decide for Sarvis, even though he was correct on the law, because of his criminal history and he was pro se; they had been prejudiced by Hathaway. But on the other hand, it also could not establish a record at either the State or at the Federal level that they had to have known would be directly at odds with U.S. Constitution and this Court's historic ruling in *Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518 (1819). Indeed, it is black letter law. By avoiding the topic, the Maine Supreme Judicial Court unequivocally denied Sarvis equal protection under the law and thus, created the basis for Sarvis current claim under the 5th and 14th Amendment.

In addition, the Maine Supreme Judicial Court violated Sarvis' rights to equal protection under law by not applying Maine divorce law, law as defined by it in *Salenius v. Salenius*, 654 A.2d 426 (Me. 1995).

CONCLUSION

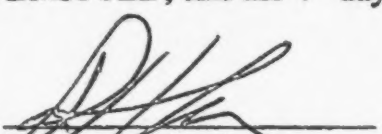
The record demonstrates that Sarvis has throughout the course of the litigation raised the issue of an interstate contract that must be enforced even though it was not incorporated in the divorce decree and clearly and unequivocally advised all of the courts, in particular, the Maine Supreme Judicial Court that serious Constitutional issues, already well decided by this Court

were at stake. Nevertheless, the Maine Supreme Court failed to even address the contract issue in any way. Its failure not only deprived Sarvis' his Constitutional right of contract, but violated his rights to equal protection under law.

Furthermore, this Court has never addressed this specific contract issue.

For all of the above reasons, this Court should grant the petition for a writ of certiorari.

RESPECTFULLY SUBMITTED, this the 4th day of June 2006.



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